

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION**

K & C PROPERTIES, INC.,	)	
RIVER CHASE APARTMENTS, INDIANA,	)	
LLC,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 4:21-cv-00039-TWP-KMB
	)	
STATE AUTO PROPERTY & CASUALTY	)	
INSURANCE COMPANY,	)	
	)	
Defendant.	)	

**ORDER OVERRULING PLAINTIFFS'  
OBJECTION TO PRELIMINARY JURY INSTRUCTION NO. 2**

This matter is before the Court on Plaintiffs' K & C Properties, Inc. and River Chase Apartments, Indiana, LLC (collectively, the "Plaintiffs") Objection to the Court's Preliminary Jury Instruction No. 2 ([Filing No. 141](#)). In particular, Plaintiffs objects to the portion of the proposed instruction which states:

To prove its bad faith claim, Plaintiffs must prove, by clear and compelling evidence, State Auto breached the duty of good faith and fair dealing owed to them. Plaintiffs may do so by, for example, establishing that State Auto did any of the following: (1) made an unfounded refusal to pay policy proceeds; (2) caused an unfounded delay in making payment; (3) deceived the Plaintiffs; or (4) exercised any unfair advantage to pressure an insured into a settlement of the claim.

Plaintiffs contend "[t]he standard of proof associated with bad faith claims should be a "preponderance of the evidence," not by "clear and convincing" evidence." ([Filing No. 141 at 1.](#))

The Court disagrees and, as set forth below, **overrules** Plaintiffs' Objection.

Under Indiana law, there is an implied duty in all insurance contracts that an insurer will act in good faith with its insured. *Erie Ins. Co. v. Hickman*, 622 N.E.2d 515, 518 (Ind. 1993). And

there is a cause of action for the tortious breach of that duty. *Id.* at 519. The Indiana Court of Appeals recently reaffirmed the standard of proof that governs bad faith claims,

To prove bad faith, the plaintiff must establish, with *clear and convincing evidence*, that the insurer had knowledge that there was no legitimate basis for denying liability. *Ind. Ins. Co. v. Plummer Power Mower & Tool Rental, Inc.*, 590 N.E.2d 1085, 1093 (Ind. Ct. App. 1992).

*Brandell v. Secura Insurance*, 173 N.E.3d 279, 287 (Ind. Ct. App. 2021) (emphasis added).

Plaintiffs have provided no authority to support their position. The law is clear, Plaintiffs must prove their bad faith claim against State Auto by "clear and convincing evidence" and, as such, the Court **OVERRULES** Plaintiffs' Objection to Preliminary Jury Instruction No. 2.

**SO ORDERED.**

Date: 7/21/2023



Hon. Tanya Walton Pratt, Chief Judge  
United States District Court  
Southern District of Indiana

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